Supreme Court, U. S.
FILED
FEB 27 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1098

HARRIET PARK, JOHN SILVERNALE, ELEANOR DOERSAM, LESLIE STEEN, JAMES KAISER, CATHERINE G. SMITH, ADELAIDE CONVERSE and J. E. HAYES,
Petitioners,
v.
LANSING SCHOOL DISTRICT and BOARD OF EDUCATION OF LANSING SCHOOL DISTRICT and THOMAS C. WALSH,
Respondents.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF MICHIGAN

DUNNINGS and CANADY, P.C.
By: STUART J. DUNNINGS, JR.
Counsel for Respondents
530 South Pine
Lansing, Michigan 48933
(517) 487-8222

Interstate Brief & Record Co., 1036 Beaubien St., Detroit, Michigan 48226
962-8745—962-8732

TABLE OF CONTENTS

	Page
Index to Authorities	i
Citations to Opinions Below	2
Jurisdiction	2
Question Presented	2
Constitutional Provision Involved	2
Statement of the Case	2
Reasons for Denying the Writ	4
Conclusion	6

INDEX OF AUTHORITIES

Federal:

McLaughlin v Florida, 379 US 184, 191, 13 L Ed 222, 228 (1964)	5
Norvel v Illinois, 373 US 420, 10 L Ed 2d 456 (1963), rev den 375 US 870, 11 L Ed 2d 99	5
Sims v Cunningham, 203 Va 347, 124 SE 2d 221, cert den 371 US 840, 9 L Ed 2d 76 (1962)	5
Williams v Walsh, 222 US 415, 56 L Ed 353 (1911)	4, 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1098

HARRIET PARK, JOHN SILVERNALE, ELEANOR DOERSAM, LESLIE STEEN, JAMES KAISER, CATHERINE G. SMITH, ADELAIDE CONVERSE and J. E. HAYES,
Petitioners,
v.
LANSING SCHOOL DISTRICT and BOARD OF EDUCATION OF LANSING SCHOOL DISTRICT and THOMAS C. WALSH,
Respondents.

ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF MICHIGAN

Respondents pray that a writ of certiorari be denied to review the judgment of the Court of Appeals of the State of Michigan entered in the above entitled cause June 27, 1975.

CITATIONS TO OPINIONS BELOW

The opinions are adequately set forth in the petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTION PRESENTED

The question is adequately set forth in the petition.

CONSTITUTIONAL PROVISION INVOLVED

The constitutional provision is adequately set forth in the petition.

STATEMENT OF THE CASE

Respondents submit the following facts in addition to those cited by petitioners to correct omissions.

Thomas Walsh, a member of the Board of Education at the time of the adoption of the informal policy, July 1, 1962, testified that the rationale behind the adoption of the policy was as follows:

> "Well, I was one of probably two men of the seven man board at that time who strongly pushed for action in this regard. It came to the attention of

two other members, two of us that the thing that Dr. Candoli stated much more initially than I, namely that the administrator who tried to provide a leadership role within the school district who lives outside and who is vulnerable to the allegations or comments that at public meetings that for example why should you tell us what millage to vote for or how much we ought to be spending, when you aren't subject to the taxes and your kids go somewhere else. It became clear to some of us that this was a serious impediment to the leadership role, which we came to expect the administrative staff of the school district to play, which required a good relationship with the public. Not simply on millage, but there were eight—more than a hundred administrators to the school district. To most citizens it is the administrators that they happen to lean on to get on to policy questions.

So, as a result in the spring of 1972, there was spirited discussion among the board informally with regard to the then condition, as we stated, that a good number of administrators, including Mr. Clark and others, have comparable living to the staff living outside of the district. I think we adopted the grandfather concept or idea because in fairness, as policy matters, one cannot really say to somebody who in good faith took on the job and bought his house elsewhere and is established there, you can't say if you're going to continue on, you've got to move into the district. We did decide that from that point forward in terms of improving the effectiveness of the administrative staff in their leadership roles to compliment it that we would require a commitment from the prospective administrators that if

they did not then live within the school district that they would do so within a reasonable period of time.

I would have to say to you, Mr. Dunnings, that at that time my colleagues were not particularly anxious to make waves with formal statements of formal policies. This did not appear to require that sort of a public confrontation. We believed then and were proven wrong in future years that a gentleman's agreement between a prospective appointee and the school district would be adequate to serve our needs. Hence, we simply—Mr. Clark's testimony comes at a later point in time that the board's decision, which was in the spring of '62, resulted in the board informally, as I recall I think Mr. Smith saying to the superintendent that this is what we will henceforth do anytime you introduce a candidate for administrative appointment, you shall have a commitment from him that if he's not a resident, he will move in." (T 147-149)*

REASONS FOR DENYING WRIT

It is the position of the respondents that frequently changes in statutory regulations are made so as to take effect after a given date without applying rigorously to previously established conditions. *Williams* v *Walsh,* 222 US 415, 56 L Ed 353 (1911).

When the informal policy was initially adopted July 1, 1962, those administrators already employed in such capacity were permitted to remain outside the district. Con-

* Reference designed "T" refer to pages in the transcript of testimony.

tracts with those administrators had already been fully executed. Hence, a law which operates alike on all persons similarly situated is not necessarily invalid because it excepts from its operation all instances in which contract rights had been acquired prior to its adoption. *Williams* v *Walsh, supra.*

Mere laxity in the administration of a policy, no matter how long continued, is not and cannot be held to be a denial of the equal protection of the law. *Sims* v *Cunningham,* 203 Va 347, 124 SE 2d 221, cert den 371 US 840, 9 L Ed 2d 76 (1962).

The Lansing School District attempted to work out a solution in adopting the initial residency requirement so as to bring about implementation without a great deal of difficulty. Rough accommodations made by government in solving its problems do not violate the equal protection clause of the Fourteenth Amendment unless the lines drawn are hostile or invidious. *Norvel* v *Illinois,* 373 US 420, 10 L Ed 2d 456 (1963), rev den 375 US 870, 11 L Ed 2d 99.

The initial policy adopted July 1, 1962 required all administrators living within the school district to remain within the school district and only excepted those who were not residing within the district at the time. The classification created by the policy was not based upon existing circumstances only, but included all those who may thereafter be in similar circumstances and conditions.

This court has held that "normally, the widest discretion is allowed the legislative judgment in determing whether to attack some, rather than all, of the manifestations of the evil aimed at; and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious." *McLaughlin* v *Florida,* 379 US 184, 191, 13 L Ed 222, 228 (1964).

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

DUNNINGS and CANADY, P.C.
By: Stuart J. Dunnings, Jr.
Attorneys for Respondents
530 South Pine
Lansing, Michigan 48933
(517) 487-8222